

## **REMARKS**

Claims 18-20 and 22-48 are pending. Claims 18, 20, 23, 24, and 26 have been amended; claims 35-48 are new. These amendments and new claims are supported throughout the specification and original claims. In particular, new claims 35-42 are supported at pages 4-21, new claims 43-45 are supported at page 24, and new claims 46-48 are supported at page 25.

Applicant appreciates the cordial telephonic interview held by Examiner Alvarez with Applicant's representatives Steven Underwood and James Bollinger on March 13, 2009 – especially the recommendations provided by Examiner Alvarez regarding proposed claim amendments. Those recommendations have been incorporated into the present claim amendments.

### **Unpatentability Rejections**

Claims 18-34 stand rejected under 35 U.S.C. § 103 as being unpatentable over Trewitt. These rejections are respectfully traversed, for the following reasons.

First, the above amendments are believed sufficient to overcome the pending rejections.

Second, regarding Trewitt, Applicant has explained in previous responses that Trewitt neither teaches nor suggests the limitations of: (1) providing an electronic query to a member of an audience for a current episode for a show that comprises a series of episodes having a common theme and characters with subsequent episodes advancing a story line of said show; (2) said query is structured in a multi-tiered query hierarchy to elicit electronic feedback messages for use to modify the story line and/or characters for future episodes of said show; or (3) aggregating a plurality of collected feedback messages into data and electronically analyzing said data to provide a report that is utilized in development of the story line and/or characters in one or more subsequent future episodes for said show.

Third, the Patent Office generally concedes that the above limitations are absent from Trewitt, but then uses "Official Notice" to reject the claims, based on the assertions that the limitations missing from Trewitt were all "old and well-known" in the art at the time of the

invention. Applicant again respectfully submits that all such takings of Official Notice are unsupported, do not conform to the MPEP, and should be withdrawn.

(1) Applicant respectfully demands documentary evidence

Pursuant to MPEP § 2144.03(C), Applicant hereby traverses each such taking of official notice and (again) respectfully demands (pursuant to the *Chevenard* decision) that the Patent Office provide supporting documentary evidence, in the next office action, for each taking of official notice, if the corresponding rejections are to be maintained.

(2) The Patent Office's takings of Official Notice lack support

The takings of Official Notice in the Office Action lack the support required by MPEP § 2144.03. For example, regarding the claim 21 limitation of "said query is part of a plurality of queries structured in a multi-tiered manner based on when a tier of questions and responses can be incorporated into said show" the Patent Office previously asserted that that limitation is "old and well known" because "based on the stage of when a new product or service, will be marketed different level of information is needed for the customers in order to fully develop the product/services." In response to Applicant's arguments, the Office Action (at page 6) now asserts that Official Notice was taken "merely to support the general notion that asking multi-tiered questions on an event that is being developed is well-known." But this assertion has no more support than the previous assertion, and Applicant once again must respectfully demand that the Patent Office provide supporting documentary evidence for this taking of Official Notice.

The following requirements of MPEP 2144.03 mandate the withdrawal of the unsupported takings of Official Notice in the present and previous Office Actions:

Official notice without documentary evidence to support an examiner's conclusion is permissible only in some circumstances. While "official notice" may be relied on, *these circumstances should be rare when an application is under final rejection . . . .*"

Official notice unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are *capable of instant and unquestionable demonstration as being well-known.*

It would not be appropriate for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable *demonstration* as being well-known.

If applicant adequately traverses the examiner's assertion of official notice, the *examiner must provide documentary evidence in the next Office action if the rejection is to be maintained.*

Fourth, Applicant respectfully submits that the Office Action improperly uses the claims as a roadmap for combining references. In making the assessment of differences between the prior art and the claimed subject matter, section 103 specifically requires consideration of the claimed invention "as a whole." Inventions typically are new combinations of existing principles or features. The "as a whole" requirement in section 103 and MPEP 2141.02 prevents evaluation of the invention part by part.

Without this important requirement, an Examiner seeking to reject a claim could simply break a claim into its component parts, then find a prior art reference corresponding to each component. This approach (which appears to have been taken in this case) improperly imports hindsight into the obviousness determination by using the invention as a roadmap to find its separate components in the prior art. Further, this improper method discounts the value of combining various existing features or principles in a new way to achieve a new result - often the essence of invention.

Regarding new claims 35-42, Applicant respectfully submits that Trewitt fails to teach or suggest the claimed limitations. Moreover, taking Official Notice of such highly technical limitations, without documentary proof, would be improper. Similarly, new claims 43-48 are not taught or suggested by the prior art.

In light of the above, all claim rejections are believed to have been successfully traversed, and Applicant respectfully requests that all of those rejections be reconsidered and withdrawn.

No fee is believed due in connection with this Response. If any fee is required, please charge such fee to Deposit Account No. 50-0310.

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Respectfully submitted,

A handwritten signature in black ink, appearing to read "Steven D. Underwood", is written over a horizontal line.

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